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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/272,190	03/18/1999	JACK H. WILSON SR.	PA-92	5336

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EXAMINER

FLORIO, KRISTINE MARIE

ART UNIT PAPER NUMBER

3671

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/272,190

Applicant(s)

WILSON, JACK H.

Examiner

Kristine M. Florio

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 29-31 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over *"Overlays on Deck"* (Civil Engineering Magazine, September 1992, pages 42-45; article written by Paul Tarricone) in view of Barton (US Patent 3,775,018).

"Overlays on Deck" discloses a method of resurfacing a road by applying a thin layer of wet polymer modified concrete (PMC) over a layer of dry pavement using a squeegee to spread the PMC having a thickness substantially less than that of the layer of pavement. This thickness can be as ¼ inch (column 1, second paragraph, line 2).

"Overlays on Deck" discloses the claimed device except for anti-ponding lines. Barton discloses that it is known in the art to provide anti-ponding lines (column 1, lines 31-46) perpendicular to travel in order to promote drainage and increase the frictional properties of the road surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pavement of *"Overlays on Deck"* with the anti-ponding lines of Barton, in order to promote drainage and increase the frictional properties of the road surface. Regarding the specific distance between anti-ponding lines, examiner takes Official Notice that it is old and well known in the art to apply anti-ponding lines at varying distances based on location of the roadway, general climate conditions, etc.

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3. Claims 32, 33, and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over *"Overlays on Deck"* in view of Jones (US Patent 5,700,385).

"Overlays on Deck" discloses a method of resurfacing a road by applying a thin first layer of wet polymer modified concrete (PMC) over a layer of dry pavement. *"Overlays on Deck"* also discloses applying a second layer of PMC over the first layer of PMC, thus creating a "multiple-layer overlay" (page 45, 2nd column, fourth full paragraph).

"Overlays on Deck" discloses the claimed device except for electrical heating elements between the layers. Jones discloses that it is known in the art to provide electrical heating elements between paving layers (column 1, lines 14-26) in order to prevent the accumulation of snow and ice on driving surfaces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the concrete structure of *"Overlays on Deck"* with the electrical heating elements of Jones, in order to prevent the accumulation of snow and ice on driving surfaces.

Regarding claims 34, 35, and 37, it would have been an obvious extension of the teachings of *"Overlays on Deck"* to apply the first layer of concrete to cover the wheel lanes of the road surface in order to reinforce the area of the road that receives the most wear from traffic.

Regarding claims 38 and 39, it would have been obvious to one having ordinary skill in the art at the time the invention was made to connect an electrical heating element to a power source such as a battery or photovoltaic energy source in order to provide power to the element and maintain the elements in working condition.

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4. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over "*Overlays on Deck*" in view of Jones as applied to claim 32 above, and further in view of Gemmer (US Patent 4,941,770).

The combination of paragraph 3 above discloses the claimed device except for copper wires in the heating elements. Gemmer discloses that it is known in the art to provide copper wires in heating elements (column 2, line 58 to column 3, line 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the resurfacing method of the combination of paragraph 3 above with the copper wires of Gemmer, in order to reduce hazardous road surface conditions.

5. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over "*Overlays on Deck*" in view of Jones as applied to claim 32 above, and further in view of "*Rapid Concrete Bridge Deck Protection, Repair and Rehabilitation*" (SHRP-S-344, National Research Council, 1993).

The combination of paragraph 3 above discloses the claimed device except for the thickness of the layers to be approximately 1/16 to 1/8 inch. "*Rapid Concrete Bridge Deck Protection, Repair and Rehabilitation*" discloses that it is known in the art to provide multiple polymer overlays with multiple layers each approximately 1/8 inch (page 12, paragraph 3, lines 8-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the resurfacing method of the combination of paragraph 3 above with the thicknesses of "*Rapid Concrete Bridge Deck Protection, Repair and Rehabilitation*", in order to maintain the original height of the traffic surface while at the same time protecting the surface from effects from weather and traffic.

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It should be noted that "*Rapid Concrete Bridge Deck Protection, Repair and Rehabilitation*" also makes reference to the benefits of polymer overlays to make minor improvements in surface drainage (i.e. anti-ponding lines) in the last paragraph of page 12.

Response to Arguments

6. Applicant's arguments filed 4/28/03 have been fully considered but they are not persuasive.

Applicant arguments state that the addition of anti-ponding lines to an existing road surface in claims 29-31 and 41, by amendment, defines over the prior art of record. Examiner disagrees with this statement, as the limitation was previously part of these claims. Additionally, the 103 rejection incorporating the Barton reference clearly teaches the use of anti-ponding lines for surface drainage. Applicant's arguments also state "the addition of the term "dry" to the claim is intended to distinguish the claim from the patent of Barton because Barton is intended to be used with new pavement construction." Examiner does not agree with this rational since the base reference ("*Overlays on Deck*") is the reference used to show the "dry" existing road surface. Barton is merely used as a teaching for forming anti-ponding lines to a pavement surface. The base reference ("*Overlays on Deck*") teaches having a dry pavement with a polymer overlay which is the layer to which the anti-ponding lines would be added. This same rational is used in regards to applicant's arguments to claims 32-40. Additionally, the Jones reference is used merely to teach that it is known to place heating elements into the upper portion of pavement, thus reading over applicant's claimed invention.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

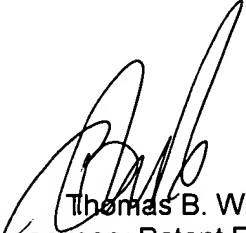
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine M. Florio, whose telephone number is (703) 305-1676. The examiner can normally be reached on Mon-Fri from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703)305-3597.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

KMF
July 24, 2003